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FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

16 FACEBOOK, INC.,

Case No. 5:08-cv-05780-LHK

17 Plaintiff,

**FACEBOOK'S REPLY RE: MOTION
FOR ATTORNEYS' FEES**

18 v.
19 POWER VENTURES, INC. a Cayman Island
corporation, STEVE VACHANI, an individual;
20 DOE 1, d/b/a POWER.COM, DOES 2-25,
inclusive,

Date:
Time:
Dept: Courtroom 8, 4th Floor
Judge: Hon. Judge Lucy H. Koh

21 Defendants.
22

1 Facebook respectfully requests that the Court grant Facebook its reasonable attorneys' fees
 2 pursuant to California Penal Code § 502(e)(2) in light of Defendants continued litigation
 3 misconduct. Defendants have failed to oppose or otherwise respond to Facebook's motion, further
 4 bolstering the very grounds that gave rise to Facebook's original request. *See* Facebook's Motion
 5 for Attorneys' Fees at 3 ("In light of Defendants' behavior just in the short period since that remand
 6 order, this Court should award Facebook its attorney's fees").

7 Prior to Facebook's motion, Facebook contacted Defendants to meet and confer on the issue
 8 of attorneys' fees as required by N.D. Cal. Local Rule 54-5. Defendant Power Ventures was unable
 9 or unwilling to meet and confer and no conference was held. On May 16, 2017, Facebook filed a
 10 bill of costs, Dkt. 444, a motion for attorneys' fees, ECF No. 446, and a motion for sanctions, Dkt.
 11 447. Defendants' responses to these motions were due on May 30, 2017. Defendants did not file
 12 any response, but instead filed an *ex parte* application for extension of time on May 31, 2017. On
 13 the same day, the Court denied Defendants application. Dkt. 449.

14 Despite the Court's order, Defendants never filed any opposition or response to Facebook's
 15 Motion for Attorneys' Fees. Defendants have therefore waived any arguments they might have had.
 16 *See* N.D. Cal. Local Civil Rule 7-1 ("opposition must be filed and served not more than 14 days after
 17 the motion was filed"); *Gwaduri v. INS*, 362 F.3d 1144, 1146 (9th Cir. 2004) ("Courts have
 18 consistently exercised their discretion to grant motions on collateral issues [such as attorney's fees],
 19 on the basis that, in failing to respond, lack of timely opposition is tantamount to a concession");
 20 *Brayton Purcell LLP v. Recordon & Recordon*, 487 F. Supp. 2d 1124, 1130–31 (N.D. Cal. 2007)
 21 (same); *Stebley v. Bank of N.Y. Mellon*, 2012 U.S. Dist. LEXIS 154982, *6 (E.D. Cal. Oct. 28, 2012)
 22 (failure to respond "deemed a statement of non-opposition to the granting of the motion"); *Pascual*
 23 *v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 18592, *27-28 (N.D. Cal. Feb. 13, 2014) (failure
 24 to timely oppose motion resulted in waiver).

25 For the reasons set forth above and in Facebook's opening brief, Facebook respectfully
 26 requests that the Court grant Facebook's motion for attorneys' fees and award Facebook the amount
 27 specified in its opening brief. *See* Facebook's Motion for Attorneys' Fees at 4.

1 Dated: June 6, 2017

Respectfully Submitted,

2 By: /s/ I. Neel Chatterjee
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